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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**JIMMY HICKMAN,**

**Defendant and Appellant.**

**A098443**

**(San Francisco County  
Super. Ct. No. 184282)**

Defendant Jimmy Hickman appeals from his sentence imposed following his guilty plea to one count of possessing cocaine base for sale. (Health & Saf. Code, § 11351.5.) Defendant was arrested when police officers, conducting a narcotics investigation, saw defendant throw a bag containing 30 rocks of crack cocaine on the ground while attempting to flee the scene of the investigation.<sup>1</sup>

At the time defendant entered his guilty plea, he consented to the imposition of a search clause permitting warrantless searches of his premises, person and vehicle, with or without probable or reasonable cause. But, he preserved his right to challenge the breadth of the police authority under that clause at a subsequent motion to modify probation. At defendant's sentencing hearing, the court suspended imposition of sentence and placed defendant on three years' probation, subject to various conditions,

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<sup>1</sup> Because defendant pled guilty to the offense before a trial or preliminary hearing was held, the facts leading up to his arrest are drawn from the probation officer's report.

including the disputed search condition. Later, the court denied defendant's motion to modify the search condition in which defendant sought to limit the search condition to instances where a law enforcement officer possessed reasonable cause to believe defendant was engaged in criminal activity.

On appeal, defendant renews his objections to the search condition. We affirm the judgment.

## DISCUSSION

### I. *Fourth Amendment Challenge*

Defendant contends the blanket search condition is overbroad, and thereby abrogates his Fourth Amendment rights against unreasonable searches and seizures, because it permits warrantless search of his person, premises and vehicles, by any peace officer, at any time, without the need to show either probable or reasonable cause to believe that criminal activity is afoot. He specifically objects to the inclusion within the search condition of the authority to search his vehicle and the two places at which he resides: his mother's home and his girlfriend's residence.

Defendant acknowledges that his challenge to the probation search condition has already been rejected by the California Supreme Court, whose decisions are binding on this court. Thus, as an intermediate appellate court, he concedes we cannot grant him the relief he seeks. Nevertheless, he renews his challenge here in order to preserve it for possible review by the California Supreme Court and the United States Supreme Court.

Since the parties to this appeal are already familiar with the relevant decisions issued by both higher courts, we shall discuss them briefly. At least since *People v. Bravo* (1987) 43 Cal.3d 600, 609, it has been clear under California law that reasonable cause is not required before officers may invoke a probation search and seizure condition, so long as the search is not "undertaken in a harassing or unreasonable manner. [Citations.]" (*People v. Woods* (1999) 21 Cal.4th 668, 682.) Furthermore, in situations where a probationer shares a residence with other persons, officers may only search those portions of such a residence over which the officers reasonably believe the probationer has complete or joint control. (*Ibid.*) When confronted with a Fourth Amendment

challenge like the one presented here, the California Supreme Court has applied a consent rationale, holding that probationers may validly consent to waiver of their Fourth Amendment rights by agreeing to accept probation subject to a search condition. (*People v. Robles* (2000) 23 Cal.4th 789, 795; *People v. Bravo*, *supra*, 43 Cal.3d at p. 611; *People v. Mason* (1971) 5 Cal.3d 759, 764-766, disapproved on other grounds in *People v. Lent* (1975) 15 Cal.3d 481, 486, fn. 1.)

Citing United States Supreme Court precedent, defendant asserts that the Fourth Amendment requires officers possess at least *reasonable suspicion* of criminality in order to conduct a warrantless search pursuant to a probationary search condition. He relies on the holding in *United States v. Knights* (2001) 534 U.S. 112, in which the high court concluded that reasonable suspicion is sufficient to satisfy the Fourth Amendment when a warrantless search is conducted pursuant to a probationary search condition. (*Knights*, at pp. 118-119, 121, 122.) In *Knights*, however, the high court never decided whether the Fourth Amendment prohibits a completely suspicionless search pursuant to a probationary search condition. (*Knights*, at p. 120, fn. 6.) As the court noted in that decision, simply because a court opinion upholds the constitutionality of a particular search pursuant to a search condition, does not mean that the opinion implicitly holds unconstitutional any search which is not like it. (*Id.* at pp. 117-118.) The *Knights* court never addressed the validity of California's consent rationale or whether an officer conducting a search without any reasonable suspicion of criminality would violate the Fourth Amendment. (*Knights*, at pp. 118, 120, fn. 6.) Because the United States Supreme Court has not decided these issues contrary to the holdings in *Bravo*, *Woods*, *Robles* and *Mason*, the California Supreme Court holdings in these decisions remain binding on this court.<sup>2</sup> (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

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<sup>2</sup> Defendant notes that on February 28, 2001, the California Supreme Court granted review in *People v. Sanders*, S094088, to consider several issues, and may reconsider its advance consent rationale in that case. On March 27, 2002, the Supreme Court has also granted review in *People v. Hanks*, S102982, and *People v. Hester*, S102961, and has

## II. *Imposing the Search Condition not an Abuse of Discretion*

Defendant contends the search condition violates the standards established in *People v. Lent*, *supra*, 15 Cal.3d 481. He asserts that his search condition is too broad in scope, because it allows officers to search his home, car or person, with or without reasonable cause, and that it is not reasonably related to his particular drug offense which occurred on a public street.

In the *Lent* decision our Supreme Court held that, in an adult probation setting, a condition of probation will be upheld unless it “ ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.]” (*People v. Lent*, *supra*, 15 Cal.3d at p. 486, fn. omitted.) Because the *Lent* standard is conjunctive, all three criteria must be present in order for a condition to be invalid. (*People v. Balestra* (1999) 76 Cal.App.4th 57, 65, fn. 3.)

On appeal, our review is limited to a determination whether the trial court abused its discretion in imposing the challenged probation condition. (*People v. Balestra*, *supra*, 76 Cal.App.4th at p. 63.) “As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or ‘ “exceeds the bounds of reason, all of the circumstances being considered.” ’ [Citations.]” (*People v. Welch* (1993) 5 Cal.4th 228, 234.)

Defendant’s challenge fails because the search condition is related to the offense of which he stands convicted (possessing cocaine base for sale) and to deterring his future criminality. A probation condition that requires a prior narcotics offender to submit to search has been upheld as aimed at deterring or discovering subsequent criminal offenses and as furthering the probationer’s reformation and rehabilitation. (*People v. Mason*, *supra*, 5 Cal.3d at p. 764.) “The high recidivism rate for narcotics offenders makes [a search] condition particularly appropriate in narcotics cases.” (*Id.* at p. 764, fn. 2.)

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deferred further action in those matters pending its disposition of *People v. Sanders*. Nevertheless, until such time as the Supreme Court overturns its consent rationale, all lower courts remain obligated to follow it.

Hence, the search condition is valid because it satisfies both the first and third aspects of the *Lent* analysis. (*People v. Lent, supra*, 15 Cal.3d at p. 486, fn. omitted.)

Defendant's claim that the search condition should be narrowed to eliminate searches of his car and residences because his drug offense took place in public is frivolous. Not surprisingly, he has cited no authority to support this claim. Since defendant was convicted of possessing cocaine for sale, allowing the search of defendant's residences, car and person is necessary to allow law enforcement officers to determine if his rehabilitation is proceeding successfully. The trial court acted well within the bounds of reason in imposing this search condition on defendant. We find no abuse of discretion occurred.

DISPOSITION

The judgment is affirmed.

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SIMONS, J.

We concur.

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JONES, P.J.

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STEVENS, J.